

**File No. 1:04-CV-335**

The Magistrate Judge's Report and Recommendation was filed June 21, 2005 (Paper 39). After de novo review and over objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. See 28 U.S.C. § 636(b)(1). The defendants' motion to dismiss (Doc. 14) is GRANTED as to plaintiff David McGee. The case shall not be dismissed with respect to the intervenor-plaintiffs. Because McGee's claims are dismissed, his motions for appointment of counsel (Doc. 7) and preliminary injunctive relief (Doc. 33) are DENIED as moot. Finally, McGee's motion for permissive joinder, brought jointly by McGee and Byron Martin (Doc. 37), is GRANTED in part and DENIED in part. The Court will not consolidate this case with the case brought by Martin, but Martin will be added as an intervenor-plaintiff, pursuant to Fed. R. Civ. P. 24(b), seeking injunctive and declaratory relief with respect to the constant illumination claim.

It is further certified that any appeal taken *in forma pauperis* from this Order would not be taken in good faith because such an appeal would be frivolous. See 28 U.S.C. § 1915(a).

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 13<sup>th</sup> day of July, 2005.

/s/ J. Garvan Murtha  
J. Garvan Murtha  
United States District Judge